Supreme Court, U.S.
FILED

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CASE NO. 03-1264

THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 2003

LAWRENCE MOORE,

Petitioner,

v.

LOCAL UNION NO. 8 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, *et al.*,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

1. Can a Union certified under federal law to negotiate and administer collective bargaining agreements fairly - for a Bargaining Unit of its members, and nonmembers - instead collude with CBA Employers to: (1) pay its members $5.00 per hour more than employees who aren't Union's members; (2) take a third of nonmembers' pay for Union's dues and its internal special purpose funds where they aren't represented; (3) coerce CBA employers to deduct Union's "takings" from nonmembers' wages by letting them take equal amounts from nonmembers' overtime pay; (4) convert Union funds' takings from nonmembers by unilateral reciprocity-agreement frauds; (5) reserve offers of membership pursuant to its CBA "union security clause" only to nonmembers who do not belong to any separate unions; (6) fail to offer nonmembers any fair-share "agency fees" alternatives to its "takings" from their wages for Union's dues; and (7) administer employers' CBA job Referral Procedure in its Union offices to (a) reserve preferred out-of-work list status for its members despite all applicants being fungible, (b) reserve CBA supervisory jobs for its members, and (c) ensure nonmembers are laid off first from the CBA employers' jobs by threats, assaults, batteries, discriminations, blacklistings, internal union charges (without jurisdiction), and default court judgments (after forcing them to leave the geographical area defined in the CBAs).

LIST OF ALL PARTIES

Petitioner, and Respondents Local 8; Local No. 8 Retirement Plan & Trust; Toledo Electrical Welfare Fund; Supplemental Fringe Benefit Fund; Electrical Industry Training Trust; Labor-Management Co-op Fund; National Electrical Benefit Fund; Dennis Duffey; Toledo Electrical Benefit Plans Board of Trustees; Richard Clarson; and the National Electrical Annuity Fund.

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No court opinions were published below.

STATEMENT OF JURISDICTIONAL GROUNDS

District court jurisdiction was proper under 28 U.S.C. §§ 1331, 1337 and 1343. An appeal court reviewed lower court orders under 28 U.S.C. § 1291, and this Court can hear this matter under 29 U.S.C. § 1254(1), and its Rule 10.

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STATEMENT OF THE CASE

Plaintiff's first claim in a Complaint filed October 26, 2001 was against all Defendants for violations of the First and Fifth Amendments by "taking" a third of his wages: for Union "dues," without offering membership or "agency fees" alternatives; for Union's "special purpose Funds" (plus an $8,880.00 lump-sum he paid Toledo Electrical Welfare Fund ("TEWF") without getting any coverage; from CBA overtime pay rates; as kickbacks to employers for deducting the money from negotiated wage rates; by refusing to stop the wrongful "takings"; and refusing to refund any of the amounts.

The wrongful "takings" were also the nexus of a Fourth Cause of Action against Union and its elected-only-by-Union-members CEO Duffey for the breaches of their duties of fair representation ("DFR"), and of the Second, Third, and Fifth Causes of Action, respectively, against all Defendants for common-law frauds and deceit, breaches of contract, and for related intentional infliction of emotional distress.

A prayer for relief asked the court to order Defendants to refund his money, and affirm that the "takings" are illegal, to declare that they may not use CBA job referral procedures (and a Union "hiring hall") to extort the "takings" from non-members, that a "neutral third party" must administer a CBA referral procedure, and to declare the Fourth Cause of Action may be litigated instead as a "breach of contract" claim.

Plaintiff also asked the court to enjoin Union and Funds from taking nonmembers' wages until required "agency fees" procedures are established, and to require them to notify non-members of their right "to be repaid for years of Defendants' ill-gotten "takings," and for any other relief deemed just.

Defendants filed an **Answer**, and Plaintiff served both Interrogatories, and Requests for Production of Documents on all of them on February 22, 2002, but TEWF Defendants (also including Retirement Plan, Supplemental Fringe Benefit Fund ("SFBF") and Clarson) responded a month late (SFBF objected to responding), NEBF Defendants (with Co-op Fund

and Training Trust) were over three weeks late, and Union and Duffey Defendants didn't respond for three and one half months. NEBF (and eventually Union) Defendants agreed to "meet and confer" but did not produce promised documents, and TEWF Defendants had previous appointments for months until they lied once too often about "out-of-town depositions" but when he arrived at their offices he was ushered into a room with a waiting court reporter to depose him without notice, and no "meet and confer" was ever held with them.[1/]

He found proof of Funds' frauds in *minutes* of TEWF's trustees meetings and seven new Funds in a "CBA" gotten by threats to charge TEWF and Union lawyers in Ohio Supreme Court (which disciplines Ohio lawyers) for unethical acts.[2/]

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[1] Plaintiff, Defendants and the judge met only once (in chambers, with no transcript) where each party summed up its case, the judge asked if they took his money and said they must return it after they admitted it, and also warned it was not a "class action." But that was the only time he was objective, later arbitrarily re-classified the case to preclude "discovery" and made subjective, *ad hominem* rulings (no findings of fact) against the Plaintiff on every issue.

One telephone conference took place five months later, and the first-person-Order-writing judge, living in the same neighborhood as a senior partner of a firm representing SFBF (dismissed after an *ex parte* letter) - reputedly the president of a local Bar Association after his appointment - misrepresented the Plaintiff didn't *meet and confer* with obstructionist SFBF lawyers to avoid accurate records.

[2] Plaintiff served second sets of interrogatories and requests for documents on Defendants after their evasions of first sets, moved to compel all Defendants to respond fully, stating he will not begin depositions until they respond, TEWF produced its mostly-redacted "minutes" that accidentally showed **SFBF's creation** by Union and Employers Association CEOs (self-appointed trustees on all funds) to "defer" a CBA pay raise to it on the eve of construction projects that needed hundreds of bargaining unit "nonmembers," deposited it instead into a newly created SFBF bank account as "required contributions," despite IRS refusals to approve it as a Voluntary Employees' Beneficiary Association for eighteen months.

Plaintiff moved to amend by adding the seven new funds, **which included at least one PAC**, and separately moved to compel responses to discovery, and to continue a discovery cut-off date (supported by affidavits and copious documents showing Defendants bad faith), and Union finally produced a CBA without sections redacted that showed its "members" were "approved" by an intra-union committee to be paid up to $5.00 more in hourly wages than nonmembers (violating and circumventing the Davis-Bacon Act).

He also moved for sanctions against TEWF Defendants' for their bad faith in discovery (only another threat to charge their lawyers before Ohio's Supreme Court produced chaos that accidentally showed SFBF's frauds), and later requested that sanctions be extended to other parties when documents promised in "meet and confers" were not produced.

The court assigned the case to its *expedited* track despite original Defendants exceeding track limits before "discovery" of seven new Funds, **and also denied** motions: to re-assign it to the *complex* track; to add newly-discovered Defendants; to compel full responses to discovery requests (despite the record of Defendants' evasions before it); and to continue the "**discovery cut-off date**" - no hearing or transcripts - while granting all the Defendants' motions for extensions of time to file related oppositions to motions, and extensions of time to move for summary judgment.

Plaintiff filed **Objections** to that court's July 18, 2002 Order, and when a *Pretrial Conference* was rescheduled only by *telephone*, filed a **Memorandum Of Issues** on: arbitrary assignment of the case to an *expedited* track; the prejudicial discovery *cutoff* even as Defendants' motions for extensions of time were granted; whether documents discovered despite Defendants' bad faith - showing SFBF's frauds - warranted a reassignment to the **complex** track; whether the *expedited* track assignment is proper when seven new Union Funds also "taking" Plaintiff's wages were discovered (witnesses and experts would also exceed *expedited* track limits), and where court records showed Plaintiff originally requested a **complex**

litigation track, and told Defendants at the case management planning meeting he needed responses to "written" discovery requests before he could depose parties and witnesses (the documents showing Defendant SFBF's frauds were attached).

Defendants moved for summary judgment (TEWF also moved to dismiss). Plaintiff filed a Memorandum and Fed.R. Civ.P. 56(f) Affidavit in opposition, and TEWF Defendants filed a late "Brief" and Affidavit opposing "Motion for Additional Discovery Pursuant to Fed.R.Civ.P. 56(f)" (sic).

The court equated Defendant Union with an IBEW union to misrepresent: Plaintiff works in Union's jurisdiction, must pay its "dues," and "obtained employment" through its hiring hall; Funds takings from his CBA wages are "contributions" by employers pursuant CBAs; he didn't follow its "discovery rules" before moving to continue its inappropriate cutoff date and to compel full responses to his copious requests; Union Defendants are not "state actors"; that Union Defendants are not "state actors" in their LMRA § 158(a)(3) roles; there are no limits on LMRA or ERISA *preemption* of fraud, breach of contract (sic) or intentional infliction of emotional distress claims; he presented no evidence Union takings were extreme or outrageous; his claims are timebarred; he contends CBAs he works under do not apply to him; Union Funds cannot be held accountable for their "takings" because they are not "state actors"; that five Funds Defendants represented by his neighbor were not served, and are not "any legal entity with the capacity to be sued"; and, finally, that he "is without a meaningful remedy...is immaterial," threatening sanctions if Plaintiff appealed (please see Appendix "APX" at pp. 30-37).

An appeal court ignored: Plaintiff was a CBA bargaining unit employee, not Union's member; he didn't violate a CBA or IBEW constitution; evidence of SFBF's creation by Union Defendants to "take" nonmembers' CBA wages, and NEBF's $50 million$ political-based fraud called for "full discovery," rather than its "**cutoff**"; SFBF's "dismissal" pursuant to an *ex parte* letter; and the law that Union is a "state-actor" and can't take nonmembers' property for its "dues" or its "funds."

STATEMENT OF FACTS

1. The employers and employees negotiated a collective bargaining agreement ("CBA") that they are now parties to.

2. Union is picked in a "*federal-government-regulated*" election as employees *federal-government-certified* "exclusive bargaining representative" to negotiate their CBAs.

3. Employers picked labor relations consultants calling themselves a "Contractors Association" to represent them.

4. Plaintiff's status as an employee in a CBA Bargaining Unit is absolutely irrelevant to his federally-appointed Unit's "exclusive representative's" *dual role* as a separate Union.

5. Plaintiff's status as an employee in a CBA Bargaining Unit is absolutely irrelevant to his membership in a separate "international union" ("IBEW") that has no CBA status.

6. The L.M.R.A. and the Labor-Management Reporting and Disclosure Act ("LMRDA") were enacted by Congress for protection against "takings" from workers paychecks,

> "to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants, and their officers and representatives which distort and defeat the policies of the [L.M.R.A.], as amended, and Railway Labor Act, as amended ...."

LMRDA § 2 (1959) (29 U.S.C. 401).

7. LMRDA § 3(o) (29 U.S.C. 402) further states,

> "'Member' or 'member in good standing,' when used in reference to a labor organization, includes any person who has fulfilled requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor been expelled or suspended from membership after appropriate proceedings consistent with the lawful provisions of the constitution and bylaws of such organization."

8. I.B.E.W. and local unions that "affiliate" with it are all separate unions bound only by a "constitution" contract. *See Plumbers and Pipefitters v. Plumbers and Pipefitters, Local 334*, 452 U.S. 615, 624, 101 S.Ct. 2546, 2551, 69 L.Ed.2d 280 (1981); *Wooddell v. I.B.E.W.*, 502 U.S. 93, 112 S.Ct. 494, 116 L.Ed.2d 419 (1991).

9. Defendant Union is not a party to CBAs, except in its dual role as the employees' *federally certified representative*.

10. Parties include *union security clauses* in their CBAs requiring that all employees either become Union's members, or pay Union "agency fees" as their exclusive representative.

11. Plaintiff got no "membership" or agency fees offers.

12. Union violates duties to represent nonmembers fairly by deciding all CBA-related matters in its internal "meetings" where nonmembers have no voice or vote (APX 28-29).

13. Union takes both its "dues" and monies for fourteen (14) of its special purpose funds from Plaintiff's wages with the assistance of CBA employers, as sworn in his Complaint.

14. Union bribes employers to take the money from his wages by letting them take equal amounts from overtime pay.

15. Union also manages employers' CBA job Referral Procedure in yet another *dual role* as the employers' agent.

16. Congress passed the Labor Management Relations Act in 1947 to make "closed shops" illegal, after years of abuses of compulsory unionism. *C.W.A. v. Beck*, 108 S.Ct. 2641, 2650 (1988).

17. The manner in which hiring halls operate creates a closed shop in violation of the law." *Local 357, Internat'l Bro. of Team, etc. v. N.L.R.B.*, 81 S.Ct. 835, 839 (1961).

18. It is an L.M.R.A. § 158(a)(3) unfair labor practice to encourage, or discourage "membership" in a union by means of discrimination. *Id. See also Beck*, at 2648.

19. [T]he very existence of the hiring hall encourages, [or discourages] union membership. *Id.*

20. "The policy of the Act is to insulate employees' jobs from their organizational rights." *Radio Officers' Union of Commercial Telegraphers*, 74 S.Ct. 323, 335 (1954).

REASONS FOR GRANTING THE WRIT

I. This petition should be granted to review affirmation of union's takings of nonmembers' wages without "due process," which conflicted with decisions of this Court and other courts, departed from the usual courses of judicial proceedings, and require the exercise of this Court's powers of supervision.

This case arose under the First and Fifth Amendments of the U.S. Constitution, the Labor Management Relations Act ("L.M.R.A.") § 158(a)(3) (29 U.S.C. § 158), and L.M.R.A. §§ 301, and 302 (the paycheck protection law) (29 U.S.C. §§ 185, 186) after Defendant Local 8 ("Union") and its special purpose funds took **non-member** Plaintiff's property (monies he earned under the collective bargaining agreement ("CBA") between employers, and employees. Union is the "exclusive representative" of a Bargaining Unit made up of its members and electricians who belong to no unions, and other unions.

Union may not extort *dues* from nonmembers' wages by abusing its *dual role* as administrator of CBA Employers' job Referral Procedure. Union's primary *dual role* is as the *federal-law-certified exclusive representative* for the CBA Employees' Bargaining Unit, in negotiating and administering the CBAs, but it has a third *dual role* administering the CBA Employees' grievance procedure. Union *per se* - not in any of its *dual roles* - has self-servingly included its private *union security clause* into Employers/Employees CBAs (pursuant to §§ 158(a)(3) and (f)(2) of a Labor Management Relations Act that was passed by Congress to end such "compulsory union" practices), and also included token references to its private, arcane "special purpose funds" into the CBAs. **But it can't take nonmembers' wages for its Union Funds**. *See Beck v. Communications Workers of America*, 468 F.Supp. 93 (1979), *aff'd*, 776 F.2d 1187 (4th Cir. 1985); *aff'd en banc* 800 F.2d 1280 (1986); *Communication Workers of America*

v. Beck, 487 U.S. 735, 108 S.Ct. 2641, 101 L.Ed. 2d 634 (1988). As this Court clearly reasoned in that dispute,

> "obviously, once...determined that the dues were not for collective bargaining purposes [or] 'for the maintenance of the [union] as an organization [the Funds] could be terminated without affecting the continued existence of [the union] as the bargaining representative.'"

Id., 108 S.Ct., at 2652-53, n.7. The Court decided a DFR exists in Constitutional claims litigated instead under LMRA § 158(a)(3) because the federal courts have "jurisdiction" over union-exactions-of-monies-from-nonmembers' claims as "governmentally compelled fees." *Id.*, 2656-57, *citing Railway Employees v. Hanson*, 351 U.S. 225, 76 S.Ct. 714, 100 L.Ed 1112 (1956) (R.L.A. preemption of state laws banning union security agreements involves governmental action); *Machinists v. Street*, 367 U.S. 740, 81 S.Ct. 1784, 6 L.Ed.2d 1141 (1961) (R.L.A. § 2, Eleventh limits union exactions from non-members to collective bargaining activities). As this Court reasoned at 108 S.Ct. 2647-48.

> Respondents ... claim that the union failed to represent the[m] ... by negotiating and enforcing an agreement that allows the exaction of funds for purposes that do not serve their interests and in some cases are contrary to their personal beliefs. The necessity of deciding the scope of § 8(a)(3) arises because *petitioners* seek to defend themselves on the ground that the statute authorizes precisely this type of agreement.

When Union's "takings" of wages from CBA parties not its members were opposed Union appealed to federal courts' ostensible authorization by Congress to create bodies of labor

and ERISA common law to subvert their Constitutional rights and exculpatorily approve outright thefts, frauds, extortions, assaults, batteries, blacklistings, discriminations, internal union charges (without jurisdiction over nonmembers), and default court judgments (after forcing them to leave the Bargaining Unit). *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 77 S.Ct. 912, 1 L.Ed.2d 972 (1957); *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 403, 108 S.Ct. 1877, 1880, 100 L.Ed.2d 410 (1988).

But, because of the Constitution, Union must also include fair share "agency fees" provisions in its CBAs if it wants to be compensated for representing nonmember CBA employees and must indiscriminately first extend its unilateral "security clause" offer of "membership" to all nonmembers, or they have no duty to pay Union any monies. At bottom, Union has no CBA standing that allows it to unilaterally include its internal union "Funds" or "security clause" in parties' CBAs.

Union's *federal-law-certified* CBA status was abused to "take" the Plaintiff's property, and its was unquestionably,

> "caused by the exercise of some right or privilege created by the state or by a rule of conduct imposed by the state or by a person for whom the state is responsible .... [and] the party charged with the conduct [is] a person [and/or an entity] who may fairly be said to be a state actor ...."

Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922, 937, 102 S.Ct. 2744, 73 L.Ed.2d 482 (1982). Union acted arbitrarily, discriminatorily, and in bad faith by abusing its role as the administrator of a job referral procedure and/or bribing CBA Employers to deduct takings for its "dues" and private Funds from Plaintiff's wages, compounded the violations of its duty to "represent" him by allowing Employers to "take" overtime wages in amounts equal to its Funds takings, and violated his First and Fifth Amendment rights in doing so.

This Court decided in *International Assoc. of Machinists v. Street*, 367 U.S. 740, 81 S.Ct. 1784, 6 L.Ed.2d 1141 (1961) that "exactions" of monies not necessary for the "collective bargaining" functions of a union violated the Constitutional rights of workers who are not members to be free of "compulsory unionism" under R.L.A. § 2, Eleventh, and that decision is also controlling on suits by non-members against unions regulated by L.M.R.A. § 158(a)(3) (29 U.S. C. § 158(a)(3)). *See Communications Workers of America v. Beck*, 487 U.S. 735, 108 S.Ct. 2641, 101 L.Ed.2d 634 (1988) (affirming district and appeal court holdings below).

Union abused its "exclusive representative" dual role by misrepresenting nonmembers agreed to defer their wages into **Voluntary Employees Beneficiary Associations** approved to exist only by the I.R.S. as per I.R.Code § 501. Deferments are approved only by members in Union's closed meetings.[3/]

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[3] Unions representing construction *bargaining units* negotiate only wage raises and "defer" parts of the "raises" into Trusts and Funds controlled by Union officers. Plaintiff informed Union Defendants at a Case Management Conference after filing a Complaint, that he would not notice depositions until he got all documents, responsive to his requests, showing the full scope of Union and Funds *takings* from nonmembers' wages including their *reciprocity* fraud takings, served requests for documents, including second sets after evasive responses, requested *meets and confers* with all Defendants lawyers for months (two groups agreed to supplement nonresponses but did not), and "TEWF" Defendants, Welfare, Retirement, Supplemental Fringe Benefit Fund and administrator Clarson successfully evaded them (trying to depose him without notice when he arrived for one meeting - scheduled after he caught them in out-of-town-deposition lies - and no "meet" was held). Plaintiff memorialized everything in unrefuted letters put before that court with discovery requests and non-responses but the court misrepresented he didn't diligently pursue discovery (because he refused to be deposed without notice, despite Plaintiff's accurate records to the contrary), did not seek any "informal resolution" (catch 22-preconditioned on a "meet and confer"), and proof that he put before it of SFBF and NEBF frauds in an opposition to summary judgment (APX 30-37, 39-40).

The Plaintiff's separate IBEW "membership" cannot mitigate Union's *takings* of his wages for its *working dues* and Funds' *required contributions* (sic), which are equal to at least a third of his CBA wages, rather than the "agency fees" it is allowed as his LMRA § 158(a)(3) representative, and it does not obligate him to sanction Union's "takings."

A district court summary judgment order erred in stating,

> "As a result of his membership in the IBEW, plaintiff is obligated to pay [U]nion dues, and is otherwise subject to ... agreements entered into between [Defendant U]nion and employers."

APX 30. A Union that negotiated Bargaining Unit pay rates for Employees can't collude with CBA Employers to include internal-Union Funds' "takings" in that CBA, defer parts of all Employees' pay to its Funds and let Employers take equal amounts from overtime pay of members, and nonmembers.

That court went on to conclude - also erroneously - that "The employers made those [Funds] contributions, pursuant to the [CBA], directly to the Funds," and further falsely find,

> "Plaintiff also alleges that the Funds have breached the collective bargaining agreement, conspired with other defendants to deprive him fraudulently of money, and intentionally inflicted emotional distress."

APX 31. Only Union's members agree to *defer* CBA wages to Funds having *no status* to also "take" nonmembers' wages, Employers don't contribute, directly, or otherwise to Funds (IBEW's internal NEBF's agents-with-no-CBA *status* extort 5% of CBA wages negotiated by all "construction unions" it *"affiliates"* with), Plaintiff never *"authorized"* TEWF to steal his $8,880.00, it lied about his *reciprocity agreement* status (none), and Union's Funds have no *status* to take his wages.

Plaintiff is not a "member" of Union within meanings of Labor-Management Reporting and Disclosure Act §§ 3(o), and 101 that define a "member." (*supra*, p.6, APX 28-29).

District court should not have held Plaintiff must tolerate Union *takings* of his property in violation of L.M.R.A. § 302 (29 U.S.C. § 186), the *Paycheck Protection Law*, and should not have granted Union and its Funds summary judgment that deprived Plaintiff of the fact-specific opportunity to show that he was not Union's member, and its Funds "takings" of his wages were not "required contributions" (sic) by Employers.

IBEW's "constitution" creates contractual relationships between Plaintiff, any affiliated local union that he becomes a member of, the IBEW, and all IBEW members, by stating:

> The acceptance of an application for membership, and the admission of the applicant into any L.U. of the I.B.E.W., constitutes a contract between the member, the L.U., and the I.B.E.W., and between such member and all other members of the I.B.E.W.

IBEW constitution, Article 22, Section 3. No contract exists between Plaintiff and any "foreign" local union ("L.U.") that he did not apply, to and was not admitted to, and he did not apply to, and was not admitted to the Defendant Union.

Orders granting summary judgment, or affirming a grant, below were grounded in courts' refusals to grant *stare decisis* effect to this Court's decision in *Communication Workers of America v. Beck*, 487 U.S. 735, 108 S.Ct. 2641, 101 L.Ed. 2d 634 (1988) to this case, and were rulings of law equating *membership* in separate IBEW with *membership* in Defendant Union. *See Wooddell v. IBEW Local 71*, 502 U.S. 93 (1991) (IBEW "constitution" is a contract between separate unions), *citing Plumbers and Pipefitters v. Plumbers and Pipefitters, Local 334*, 452 U.S. 615 (1981).

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[4] *Beck* uses outdated "NLRA," rather than "LMRA," cites.

Defendant Union is a "state actor" and violated the Constitutional rights of "Bargaining Unit" employees who are nonmembers by taking one third of Plaintiff's wages for Union's "dues, and its "special purpose funds."

This Court, in *C.W.A. v. Beck*, affirmed rulings that:

> "(1) courts had jurisdiction over claims that exaction of agency fees beyond those necessary to finance collective-bargaining activities violated the judicially created duty of fair representation and nonunion members' First Amendment Rights."

Communication Workers of America v. Beck, 108 S.Ct., at 2642 (1988).

The Court held § 8(a)(3), like § 2, Eleventh, authorizes only exaction of the fees and dues necessary to "performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues." *Communications Workers of America v. Beck*, 108 S.Ct. 2641, 2657 (1988).

The Court thus reinforced its pragmatic decision to avoid Constitutional decisions where a different option pursuant to statutory constructions was possible,

> Accordingly, in Street we interpreted § 2, Eleventh to avoid the serious constitutional questions that would otherwise be raised by a construction permitting unions to expend **governmentally compelled fees** on political causes that nonmembers find objectionable...., and we therefore need not strain to avoid the plain meaning of § 8(a)(3) as we did with § 2, Eleventh. (Citations omitted.) (Emphasis added.)

C.W.A. v. Beck, 487 U.S., at 761. 108 S.Ct., at 2656-57.

Union may not bribe CBA Employers to deduct Union and Funds' "takings" from the wages of nonmembers - in amounts approved only by members in closed-to-nonmembers meetings - by letting CBA Employers also take nonmembers' "overtime" wages in amounts equal to the Union's takings. *See* APX 28-29: nonmembers have no intra-Union *standing*.

Union may not abuse its *dual role* as a Bargaining Unit's representative by having CBA Employers pay *members* $5.00 more than *nonmembers* for the same work (*supra*, p.4).

Union may not reserve offers of "membership," pursuant to its CBA "union security clause," only to nonmembers who do not belong to any separate unions, and that provision is .

Union's members may be considered bound by *collective* votes of active minorities at its meetings, but nonmembers are specifically excluded from any such internal Union votes, and have no standing to be so bound (APX 28-29).

Union *per se*, rather than in its dual role as the CBA "exclusive representative" of Employees, has members vote to defer part of their wages into the income tax exempt funds (or Union officers vote for them, and Funds must be approved by the IRS to exist and receive the deferred wages are private, internal union agreements, rather than CBA duty-of representation agreements.

Union may not fraudulently convert its Funds' takings from nonmembers *via* arbitrary *reciprocity* agreements where they have no status, are not represented, and can't get vested or otherwise qualify for Funds' "benefits."

Union may not "take" nonmembers' wages for internal special purpose Funds by calling those takings "required contributions" by Employers.

Union's CEO administers Employers' CBA job Referral Procedure in its offices to (a) reserve preferred out-of-work list status, and (b) supervisory jobs for its members, and (c) ensure nonmembers are laid off first by threats, assaults and batteries, discriminations, blacklistings, internal union charges (without jurisdiction), and default court judgments (after forcing them to leave the Bargaining Unit).

Unions *certified* by federal government administrative agencies as "exclusive representative" of all the employees in a Bargaining Unit are "state actors" in that capacity.

The construction unions affiliated with IBEW that are NLRB *certified* to represent Bargaining Units don't negotiate "fringe benefits," but negotiate only wage increases and later vote in internal Union meetings to "defer" parts of increases into the Union Funds. Plaintiff diligently pursued discovery of documents needed to impeach Defendants use of "required contributions" euphemisms, and to establish the full purposes and extents of Union's "takings" from nonmembers.

All of Plaintiff's writings in pursuit of discovery were before the district and circuit courts, including all letters leading up to meet-and-confers and memorializing them, with his failed, repeated attempts to engage TEWF Defendants in "meet and confers" (his F.R.Civ.P. 56(f) Affidavits included proof of Defendants' culpability, and their willingness to use physical force to protect *takings*, but lower courts' Orders showed that they ignored his proof and diligent discovery).

Access to proof must be seriously considered when granting summary judgment where, as here, the crucial facts are within the control of moving Defendants. *White Motor Co. v. United States*, 372 U.S. 253, 83 S.Ct. 696, 9 L.Ed.2d 738 (1963); *Poller v. Columbia Broadcasting Sys.*, 368 U.S. 464, 82 S.Ct. 486, 7 L.Ed.2d 458 (1962); *In Re Edmond*, 934 F.2d 1304 (4th Cir. 1991) (defendant may not selectively offer affidavits supporting "facts" while simultaneously using the [facts and law] to forestall discovery).

Plaintiff's claims aren't "timebarrred," preempted, or subject to exhaustion of internal union or CBA remedies.

> "The courts below, of course, possessed jurisdiction over respondents' constitutional challenges. Whether or not the NLRB entertains constitutional claims, such claims would not fall within the Board's primary jurisdiction." (Citations omitted.)

C.W.A v. Beck, 108 S.Ct. 2641, 2648, at n.1.

Plaintiff objected Union had used monies "taken" from his CBA wages for *political, organizing* and other prohibited purposes, as a *Beck* Court affirmed, rejecting union requests that plaintiffs be required to exhaust its grievance procedure.

> Thus, it is clear that the law does not require an affirmative demonstration of protest as a condition precedent to bringing suit. All that is required is that the individual dissenter make known his position so that, in fairness to the union, no one who does *not* object to the union's political expenditures is able to secure relief.

Beck v. C.W.A., 468 F.Supp. 93, 95 (D.C.Md 1979), *citing International Association of Machinists v. Street*, 367 U.S. 740 (1961); *Brotherhood of Railway, etc. v. Allen*, 373 U.S. 113, 119 n.6, 83 S.Ct. 1158, 1162, 10 L.Ed.2d 235 (1963)

Chicago Teachers Union, Local No. 1 v. Hudson, 106 S.Ct. 1066 (1986) controls the Union refusals to establish "agency fees" procedures where, as here, Union Defendants clearly prefer their non-accountable *status quo*.

This Court affirmed lower court decisions related to the timeliness of *Beck* plaintiffs' complaint, and decided abuse of a six months statute of limitations to dismiss such claims was clearly contrary to the Court's related, controlling decisions.

> Respondents first made known their objection to the petitioner's political expenditures in their complaint filed in this action; however, this was early enough.

C.W.A. v. Beck, 375 U.S. 113, 119 (1963).

Although his complaint was filed within six months of receiving Union Defendants' rejection of a "demand" letter, the courts below should not have used LMRA § 160(b)'s 6-

month limitation period to dismiss Plaintiff's complaint, when all Constitutional claims were being litigated instead under LMRA § 158 (a)(3)(29 U.S.C. § 158(a)(3)).

This Court invalidated Unions' use of nonmembers' dues for expressions of political views, and support for political candidates. *Abood v. Detroit Board of Education*, 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261 (1977) (unions cannot use agency fees for purpose other than collective bargaining without it implicating First Amendment rights); *Beck v. C.W.A.*, 776 F.2d at 1205-1209 (4th Cir. 1985) *citing Abood* (sufficient "governmental action" exists).[6/]

> "[T]he Union should not be permitted to exact a service fee from nonmembers without first establishing a procedure which will avoid the risk that their funds will be used, even temporarily, to finance ideological activities unrelated to collective bargaining."

Chicago Teachers Union, Local No. 1 v. Hudson, 106 S.Ct. 1066, 1075 (1986), *citing Abood*, 431 U.S., at 244, 97 S.Ct. at 1804.

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[6] In return for employers' cooperation in processing their illegal "takings" from employees' paychecks Union fraudulently lists the hourly wages remaining *after* deductions for its Funds in the CBAs it negotiates as employees "exclusive representative," rather than true "negotiated" hourly rates that include those amounts deducted. That allows employers to deduct amounts equal to Funds' takings from employees' paychecks without making any records. If there were no "takings" by Union, and no deductions by employees all negotiated CBA wages would be included on their paychecks, and compounded for overtime in a same manner as "remaining" wages. Union's members have a vote on *business manager* Duffey and do not suffer Hiring Hall discriminations nonmembers do, and may actually share in the benefits of the illegal "takings" from Plaintiff and other non-members. Union's Pension Fund "caste system" is blatantly discriminatory against non-members.

Union CEO Duffey is the individual who caused Union and Funds to not live up to the negotiated CBA by illegally,

> "enforcing an agreement that allows the exactions of funds for purposes that do not serve [non-members'] interests and in some cases are contrary to their personal beliefs."

Communication Workers of America v. Beck, 108 S.Ct. 2641, 2647-48 (1988).

Plaintiff set forth in F.R.Civ.P. 56(f) Affidavits why he should be allowed to discover all "relevant facts" (see pp. 2-5, 16, *supra*).[7] *See Costello, Porter, Hill, Heisterkamp & Bushnell v. Providers Fidelity Life Ins. Co.*, 958 F.2d 836 (8th Cir. 1992) (information needed ... is in sole possession of opposing party, and the failure to allow discovery required reversal). *Accord, Garrett v. City and County of San Francisco*, 818 F.2d 1515 (9th Cir. 1987).

While lower courts have "sound discretion" and maintain significant authority to receive "evidence" pertaining to the legitimacy of federal claims, "discretion" to order discovery, or hold evidentiary hearings become an "obligation" when,

> "specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is ... entitled to relief.

Harris v. Nelson, 394 U.S. 286, 300 (1969). In these circumstances, "it is the duty of the court to provide the necessary facilities and procedures for an adequate inquiry."

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[7] Plaintiff's Rule 56(f) Declarations show commitments of unions affiliated with the IBEW to political action and "organizing" that are unrelated to "collective bargaining." *See IBEW Local 357 v. Brock*, 68 F.3d 1194 (9th Cir. 1995); *Building and Construction Trades, et al. v. Reich*, 820 F.Supp. 11 (D.D.C. 1993), *aff'd*, 40 F.3d 1275 (D. C. Cir. 1994), *cert. denied* __ S.Ct. ___ (199_).

Id. See Bracy v. Gramley, 520 U.S. 899, 908-09 (1997); *Lynott v. Story*, 929 F.2d 228, 232 (6th Cir. 1991).

Union members voted at closed-to-nonmembers meetings to pay "dues" to Local 8, and to participate in its Funds and Plaintiff had no such "vote," or "choice" on Union taking his wages and rejecting his *demand letter* for a refund.

It is also unlawful under LMRA § 302(b)(1) and (2) (29 U.S.C. § 186) for Union to demand, or accept wages it took, ostensibly pursuant to § 302(c)(5)(A), (B) and (C), because Plaintiff didn't become a part of the necessary § 302(c)(5)(B) voting **"employee group"** limited to Union's members.

Union damaged Plaintiff by secretly agreeing overtime pay was calculated after its Funds "takings" of wages.

His claim for fraud and deceit doesn't require a reference to or interpretation of the CBA because internal Union Funds provisions for illegal takings of nonmember Plaintiff's wages should not be in the CBA (Union is not a CBA "party") and their takings from CBA overtime wages are not in the CBA.

A tort action for fraud is not preempted by LMRA § 301 where, as here, it does not require reference to the CBA. *Operating Engineers Pension Trust v. Wilson*, 915 F.2d 535 (9th Cir. 1990), *cert. denied*, 505 U.S. 1212, 112 S.Ct. 3013, 120 L.Ed.2d 886 (1992); *see also Hayden v. Reickerd*, 957 F.2d 1506 (9th Cir. 1991) (employee's state law fraud and deceit claim against the union and the funds arose from the right created by independent state common law and not by a CBA, and thus was not preempted; whatever parties' rights and duties are under the CBA they could not possibly have negotiated infringement of employee's right to be free from [fraud] (there "battery")); *Borek v. Weinreib Management*, 933 F.Supp 357 (S.D.N.Y. 1996) (declaratory judgment action sought refunds of payments because the monies were obtained by the misrepresentations plaintiff is "voluntary participant"); *Wilson & Co. v. United Packinghouse Workers of America*, 181 F.Supp 809 (N.D.Iowa 1960) (LMRA does not exclude a tort action under the state common law against a union); *Wells v. General Motors Corp.*, 721 F.Supp. 107,

aff'd and remanded, 881 F.2d 166, *rehearing denied*, 495 U.S. 923, 110 S.Ct. 1959, 109 L.Ed.2d 321 (1990).

Unions may not subvert the priorities of federal courts, related to labor policies and industrial peace that encourage "collective bargaining" with employers, by abusing federally certified duties (to represent employees) to instead have their Union Funds take employees' wages, and enforce the takings by abuses of CBAs' job Referral Procedures. Federal courts have a duty to determine whether a contract violates federal law before enforcing it. *Kaiser Steel Corp. v. Mullins*, 455 U.S. 72, 102 S.Ct. 851, 70 L.Ed.2d 833 (1982).

This Court has declined to impose L.M.R.A. § 160(b)'s 6-months limitations period on suits, like the instant action,

> Because [it] ... is modeled on the First Amendment, it is readily analogized to state personal injury actions.... It was held that suits under 42 U.S.C. § 1983, which also protects the exercise of First Amendment rights, are governed by state general or residual personal injury statutes of limitations. (Cite omitted.)

Reed v. United Transp. Union, 488 U.S. 317, 319-320, 109 S.Ct. 621, 623, 102 L.Ed.2d 665 (1989), further deciding,

> The 6-month § 10(b) statute of limitations was crafted to accommodate federal interests in stable bargaining relationships between employers and unions and in private dispute resolution under [CBAsl. Insofar as those interests are implicated ..., however, the relationship will be tangential or remote - as in the present case, which involves [a] dispute that can have only an indirect impact on economic relations between union and employer and on labor peace.

Because instant Constitutional claims protect exercise of First Amendment rights, and may instead be resolved via the "judicially implied" L.M.R.A. duty of fair representation, and criteria usually present to accommodate federal interests in stable bargaining relationships between CBA parties, or in private "dispute resolution" under CBAs, which normally call for the 6-months statute of limitations, are not present, there is no good reason to impose it here.

Lower courts should not have equated Defendant Union with an IBEW union, and misrepresented: Plaintiff works in Union's jurisdiction; he must pay its "dues"; he "obtained employment" through its hiring hall; Funds takings from his CBA wages are "contributions" by employers; there are no limits on LMRA or ERISA *preemption*; he contends CBAs he works under do not apply to him; five Funds represented by the judge's neighbor were not served, and are not "any legal entity with the capacity to be sued"; and that Plaintiff "is without a meaningful remedy ... is immaterial."

Those courts should not have ignored: Plaintiff is a CBA Bargaining Unit employee; he was not Union's member; he did not violate a CBA or IBEW's constitution; the evidence of SFBF's creation by Union specifically to take the CBA wage increase it negotiated from nonmembers; SFBF's pay-base fraud and NEBF's $50 million political-based fraud both called for "full discovery," rather than its "**cutoff**"; SFBF's "dismissal" pursuant to an *ex parte* letter; the law that Union is a "state-actor" and can't take nonmembers' property for its "dues" without agency fees options, or for its "Funds""; that the court would not let Plaintiff amend his Complaint to add seven newly-discovered Union Funds also taking his wages, and that he put all the documents before the district court.

Defendants were excused from answering "discovery" by the court's refusal to continue a wrong, too-short discovery "cutoff" date in the face of his motion to compel responses, and escaped sanctions for their dilatory failures to respond. Plaintiff is entitled to complete "discovery," to get a trial on the merits and get requested declaratory and injunctive relief.

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Labor Management Relations Act § 158 (29 U.S.C. 158)

(a) Unfair Labor practices by employer

(3) It shall be an unfair labor practice for an employer - by discrimination in regard to hire or tenure or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this subchapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this subsection as an unfair labor practice) **to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later**, (i) if such labor organization is the representative of the employees as provided in section 159(a) of this title, in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 159(e) of this title within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(f) Agreement covering employees in the building and construction industry

It shall not be an unfair labor practice under subsections (a) and (b) of this section for an employer engaged primarily in the building and construction industry to make an agreement covering employees engaged (or who, upon their employment, will be engaged) in the building and construction industry with a labor organization of which building and construction industry employees are members (not established, maintained, or assisted by any action defined in subsection (a) of this section as an unfair labor practice) because (1) the majority status of such labor organization has not been established under the provisions of section 159 of this title prior to the making if such agreement, or (2) **such agreement requires as a condition of employment, membership in such labor organization after the seventh day following the beginning of such employment or the effective date of the agreement, whichever is later**, or (3) such agreement requires the employer to notify such labor organization of opportunities for employment with such employer, or gives such labor organization an opportunity to refer qualified applicants for employment, or (4) such agreement specifies minimum training or experience qualifications for employment or provides for priority in opportunities for employment based upon length of service with such employer, in the industry or in the particular geographical area: *Provided*, That nothing in this subsection shall set aside the final proviso to subsection (a)(3) of this section: *Provided further*, That any agreement which would be invalid, but for clause (1) of this subsection, shall not be a bar to a petition filed pursuant to section 159(c) or 159(e) of this title.

* The clauses referred to here, and in § 158(a)(3) are CBA "union security clauses" requiring employees to join unions.

Labor-Management Reporting and Disclosure Act

Declarations of Findings, Purposes, and Policy:

Sec. 2(b). (29 U.S.C. 401) The Congress further finds, from recent investigations in the labor and management fields, that there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplemental legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.

(c) The Congress, therefore, further finds and declares that the enactment of this Act is necessary to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants, and their officers and representatives which distort and defeat the policies of the Labor Management Relations Act, 1947, as amended, and the Railway Labor Act, as amended, and have the tendency or necessary effect of burdening or obstructing commerce ....

Definitions: Sec. 3(o). (29 U.S.C. 402)

For the purposes of titles I, II, III, IV, V (except § 505), and VI of this Act - "Member" or "member in good standing" when used in reference to a labor organization, includes any person who has fulfilled the requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership ....

Title I - Bill of Rights of Members (29 U.S.C. 411):

Sec. 101(a)(1). Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections ..., to attend membership meetings and to participate in the deliberations and voting ... subject to reasonable rules and regulations ....

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
1125 Fifteenth Street, N.W.
Washington, D.C. 20005

TO ALL IBEW LOCAL UNIONS IN THE UNITED STATES AND CANADA:

Dear Sisters and Brothers:

Some questions have recently arisen about the meaning of the amendment of Article XXIV, Section 1, of the IBEW Constitution, at the 1996 Convention. The purpose of this letter is to provide you with my interpretation, pursuant to my authority under Article IV, Section 3(2), of the IBEW Constitution, of the meaning of amended Article XXIV, Section 1. I want to make certain that there is a uniform interpretation and application of this provision throughout the Brotherhood.

The old Article XXIV, Section 1, had the same rule for a member traveling, or visiting, a Local Union, and said that both *"shall"* be admitted to its meetings. The clear intent of the amendment offered by Local Union 1049 was to change the *"shall"* to *"may"* and specify that both the traveling and visiting member would have no voice or vote. Under the substitute resolution submitted by the Law Committee, there are separate provisions for members working in a different Local's jurisdiction and a member visiting a different Local.

With respect to the *visiting* member the new language clearly states that he or she "may" be admitted to the meeting - at the option of the Local union in question - but without voice

(Several erroneous statements made during the debate about legal requirements are likely to have confused the issue, and it is in part for that reason that I find it necessary to provide this interpretation for the new provision.)

or vote. Under the amendment, a member *working* in a different Local's jurisdiction *"shall"* be admitted to its meeting *(as under this provision before the amendment)*, but that paragraph is silent with respect to whether the traveling member has a voice or vote.

Based on the language of the amendment, offered by Local Union 1049, and the essence of the discussion during the debate on the amendment, it is my interpretation that although the traveling member has the right to attend a Local Union meeting, **he does so without voice or vote.**

In sum, Article XXIV, Section 1, is interpreted as follows:

1. A *traveling* member working in another Local union's jurisdiction *shall* be admitted to its meetings. he is not, however, a member of the second Local Union because of this amendment. Nor is he entitled to voice or vote on collective bargaining agreements or any other issues, and he most certainly is not eligible to vote in internal elections within that Local Union.

In other words, there are no rights granted to the traveler other than having the right to attend the Local union meeting. As noted above, the intent of the two paragraphs in this section is only to distinguish between a traveling member employed in the Local union's jurisdiction and a visiting member not employed in the Local union's jurisdiction.

2. When a member wishes to *visit* a different Local Union, that Local Union *may* - but is not required to - admit that member to its meetings. The visiting member has no voice or vote at the meeting.

Dated: May 5, 1997

J.J. Barry
International President

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

Lawrence Moore	)	CASE No 3:01-7556
	)	
Plaintiff,	)	
v.	)	ORDER
Int. B'hood of Elect.	)	
Wkrs. Local 8, *et al*,	)	
	)	
Defendants.	)	

This is a suit by a member of the International Brotherhood of Electrical Workers (IBEW). For about twenty years, plaintiff Lawrence Moore had been a "traveler" - i.e., he has worked within the jurisdiction of various IBEW local unions in various areas of the United States. As a result of his membership in the IBEW, plaintiff is obligated to pay union dues, and is otherwise subject to the provision of the Union Constitution and agreements entered into between the union and employers. Thus, when plaintiff works for an employer bound by a collective bargaining agreement, he is bound by that agreement.

Plaintiff worked briefly for three employers as an electrician, obtaining his employment through a hiring hall maintained by IBEW Local 8 (Local 8). The employers, and hence, the terms and conditions of plaintiff's employment with those employers, were covered by a collective bargaining agreement.

Pursuant to that agreement, the employers make fringe benefit contributions to employee benefit funds, including the defendant National Electrical Benefit Fund, Labor Management Cooperation Committee, inc., and Toledo Joint Apprenticeship Training Trust Fund (collectively, "Defendant Funds" or "Funds"). The employers nade those contributions, pursuant to the collective bargaining agreement, directly to the Funds.

The fact that the employers made those payments directly to the Funds, rather than to the plaintiff, is the basis for this litigation. Plaintiff claims, inter alia,that the defendants

converted his wages and violated his federal constitutional rights and the Labor Management Relations Act when they agreed to such method of payment of fringe benefit contributions without granting plaintiff a vote on participating in the Funds. In addition, the plaintiff claims that the Funds violated his constitutional and statutory rights by refusing to apply prospectively, from the date of receipt, employee benefit contributions made on his behalf to other welfare funds in other IBEW locals' jurisdiction and transferred to the Funds at his request.

Plaintiff also alleges that the Funds have breached the collective bargaining agreement, conspired with other defendants to deprive him fraudulently of money, and intentionally inflicted emotional distress.

For the reasons that follow, I find that there can be no genuine disputes of material fact and I conclude that there is no merit to plaintiff's claims. The motions for summary judgment filed by the defendants shall accordingly, be granted.[1]

Plaintiff has filed a motion to continue the discovery cutoff date and compel discovery and for sanctions. For the reasons that follow, that motion shall be denied.

1. Plaintiff's Motion to Continue Discovery, etc. and Defendants' Motion to Strike

Plaintiff has filed a motion to continue the discovery cutoff date and compel discovery and for sanctions. (Doc. 40). In addition to opposing the motion, the defendants have moved to strike the plaintiff's motion for failure to comply with the local rules relating to discovery disputes. (Doc.53). The defendants' motion shall be granted and the plaintiff's motion shall be denied.

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[1] This is not the first instance in which claims such as those made by plaintiff in this case have been found to be without merit. Local 8's motions for summary judgment lists several other cases in which plaintiff unsuccessfully brought similar claims. Doc. 78 at 3-4 n.2. At least one other court has described him as a "vexatious litigator." Id. at 4.

Pursuant to Local Rule 37.1, parties engaged in discovery disputes are required promptly contact the court to seek resolution of such disputes without the expense and delay attendant the invariable result from the filing of motions to compel. That rule codifies the practice of attempting informal resolution of discovery disputes that I have followed for more than twenty years as a federal judicial officer. Implementation of the rule plays an important role in reducing delay; hence, I insist that it be followed by all parties, including parties proceeding, as is the plaintiff in this case, pro se.

Prior to contacting the court for informal resolution of discovery disputes, our local rule also requires parties to meet and confer in good faith to seek to resolve such disputes. The purposes of this rule is to ensure that recourse to the court is limited to instances in which there is a genuine dispute about material aspects of discovery. I consider compliance with this rule to be essential to the goal of reducing expense, delay, and uncertainty.

Plaintiff failed to comply with these rules before filing his motion to continue the discovery cutoff date and compel discovery and for sanctions. he refused to participate in a "meet and confer" with counsel on the grounds that he did not want a record to be made of the meeting, at which a court reporter was in attendance.

Plaintiff's refusal to permit a record to be made of his discovery conference was unjustified. Without expense to himself, plaintiff would have had a complete and accurate record of what was discussed, what was resolved, and what was left unresolved. His refusal to permit the record to be made was unjustified, and manifests a bad faith failure on his part to comply the meet and confer requirement. On that basis alone, his motion should be denied, and defendants' motion to strike should be granted.

In any event, plaintiff failed thereafter to contact the court to seek informal judicial resolution of his discovery disagreements with the defendants. Because he failed to do

so, his motion shall also be overruled on that basis, and defendants' motion to strike shall be granted.

Despite plaintiff's noncompliance with the local rules, which, at least in part, was willful and in bad faith, I have reviewed plaintiff's motion and defendants' objections thereto on their merits. I conclude that, aside from plaintiff's noncompliance with the informal resolution procedures mandated by our local rules, his motion should be overruled.

Plaintiff contends that his need to extend the discovery cutoff resulted from dilatoriness on the part of defendants' counsel in responding to his discovery requests. That allegation ignores his own failure to participate in the "meet and confer" process. had he done so, the areas of dispute would have been narrowed, if not eliminated.

I note that this is not a case in which no discovery was provided; indeed, it appears that substantial responses were given to the plaintiff.

Plaintiff agreed to the discovery deadlines at the case management conference. Though he may thereafter have submitted interrogatories with a degree of promptness, he allowed the discovery process to become stalled when he failed to participate in the procedures mandated by the local rules. Accordingly he permitted the discovery cutoff to lapse without having taken any depositions, or otherwise having meaningfully progressed toward completion of discovery.

Timely attention to discovery deadlines is essential, particularly where no objection has been voiced to the time allowed to discovery, either at the outset, or once it appears that discovery cannot, despite due diligence, good faith, and compliance with pertinent rules relating to the resolution of discovery disputes, be accomplished fully and fairly within the prescribed period. Here, however, plaintiff filed his motion less than two weeks before the discovery deadline.

Though plaintiff may not bear all the blame for the fact that the period for discovery passed without his having obtained the information he seeks, he is primarily responsible for that circumstance. His motion to continue the discovery

deadline and to compel and for sanctions shall accordingly be denied on its merits. See generally Plott v. General Motors, Packard Electric Division, 71 F.3d 1190 (6th Cir. 1995); Wayne v. Village of Sebring, 36 F.3d 517, 530 (6th Cir. 1994)(not an abuse of discretion to refuse to extend discovery cutoff where party did not proceed with discovery diligently).

2. Defendants' Motions for Summary Judgment

Plaintiff claims that these defendants have: 1) violated the First and Fifth Amendments to the United States Constitution; 2) engaged in fraudulent and deceitful misconduct; 3) breached their contractual obligations; 4) violated their duty of fair representation; and 5) intentionally inflicted emotional distress. The defendants are entitled to summary judgment as to each of plaintiff's claims.

i. Constitutional claims

Plaintiff claims that these defendants have violated his constitutionally protected rights of free speech and free association and have engaged in improper takings.

None of the defendants is a state actor, thus, they cannot be held liable under 42 U.S.C. § 1983 for any putative constitutional violations. Messman v. Helmke, 133 F.3d 1042, 1044 (7th Cir. 1997). I agree with the decisions of other courts rejecting plaintiff's constitutional claims in other cases brought by the plaintiff. See Moore v. International Brotherhood of Electrical Workers Local 6, No. C01-03733 (N.D.Cal. 1/28/02)(Doc. 78, Exh.4). The reasoning and or result reached therein are adopted and incorporated herein.

ii. Fraud

Plaintiff claims that the defendants fraudulently deceived him by referring to allegedly unlawful deductions as employer contributions, thereby misrepresenting his wage and overtime rates. He also alleges that the defendants committed the tort of intentional infliction of emotional distress.

These are state claims that have been preempted by the

LMRA. See e.g., Martin v. Assoc. Truck Lines, Inc., 801 F.2d 246, 249 (6th Cir. 1986).

These claims are likewise preempted by ERISA, which expressly preempts state law claims "insofar as they relate to any employee benefit plan." See, e.g., Kentucky Laborers District Council Health & Welfare Fund v. Hope, 861 F.2d 1003, 1004 (6th Cir. 1988).

In any event, there is no merit to plaintiff's claim of intentional infliction of emotional distress: he has presented no evidence that the actions of the defendants were extreme or outrageous, as required under Ohio law. See, e.g., Deoma v. Shaker Heights, 68 Ohio.App.3d. 72 (1990).

iii. Breach of Contract and Breach of Duty of Fair Representation

Counts three and four of plaintiff's complaint allege violations of the Union Constitution and the defendants' duty of fair representation. These LMRA claims, even if meritorious, are timebarred. In DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983), the Supreme Court held that claims of such breaches had to be brought within six months of their occurrence.

Plaintiff's complaint is based on acts occurring more than six months prior to the filing of the complaint in this case.

In addition, as the defendants argue, the plaintiff has failed to exhaust his internal union remedies, as he must before he may bring suit against the union or his employer. 29 U.S.C. § 185(a). See generally Republic steel v. Maddox, 379 U.S. 650, 652-53 (1965).

B. Defendant Funds' Motion

Plaintiff claims that when he travels and works for an employer with a collective bargaining agreement, that agreement does not apply to him. He contends, apparently, that each employer for whom he works must have a separate collective bargaining agreement applicable to him and his employment with that employer. Other courts have rejected

these claims. See Moore v. IBEW Local 58, no. 01-72222 (E.D.Mich. 3/18/02)(Doc. 78, Exh. 3); Moore v. International Brotherhood of Electrical Workers Local 6, No. C01-03733 (N.D.Cal. 1/28/02)(Id., Exh.4). The reasoning of and result reached by those courts are adopted and incorporated herein (sic).

Plaintiff's claims against the Funds suffer from the same defects as his claims against Local 8 and Duffey. Thus, as to plaintiff's constitutional claims, the Funds are not state actors, and cannot be held accountable for any putative breach of the defendant's (sic) constitutional rights.

Plaintiff's state law claims for fraud, breach of contract, and intentional infliction of emotional distress are preempted by the LMRA because they rely on or entail interpretation of the collective bargaining agreement and agreements adopted pursuant to the collective bargaining agreement. See, e.g., Northwestern Ohio Administrators, Inc. v. Walcher & Fox, Inc., 270 F.3d 1018 (6th Cir. 2001).

Plaintiff's state law claims for fraud, Central States, Southeast and Southwest Areas Pension Fund v. Mahoning Nat. Bank, 112 F.3d 252, 256 (6th Cir. 1997), breach of contract, Gordon v. Barnes Pumps, Inc., 999 F.2d 133, 137 (6th cir. 1993), and intentional infliction of emotional distress, Metropolitan Life Ins. Co. v. Taylor, 481 U.s. 58 (1987), are, as well, preempted by ERISA.

Plaintiff's complaint does not allege a claim under ERISA, because the remedial provisions of that statute relate solely to recovery of benefits due under an ERISA plan, enforcement of rights under such plan, or clarification of rights to future benefits. 29 U.S.C. § 1132(a). These remedies are not subject to expansion or supplementation by state law remedies. See, e.g., Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 56 (1987). That plaintiff may be without a remedy for the wrongs allegedly inflicted on him is immaterial. See Corcoran v. United Healthcare, Inc., 965 F.2d 1321, 1338 (5th Cir. 1992).

C. Motion of Local 8 Retirement Plan and Trust Toledo Electrical Welfare Fund & Richard Clarson

Plaintiff named other benefit funds and another individual defendant in his complaint. These include the Toledo Electrical Welfare Fund, International Brotherhood of Electrical Workers Local 8 Retirement Plan and Trust, and Richard Clarson. Those defendants have not been served. Their motion for summary judgment shall, accordingly, be granted.

Conclusion

There is no merit to any of plaintiff's claims against any of the defendants. He has frequently brought similar claims against other unions. At least one other court has found him to be a vexatious litigator.

The time has come for the plaintiff to accept the fact that his claims are without merit. If he continues this fruitless, vexatious, and harassing litigation by either filing a motion for reconsideration or other pleadings in this case (now that it is being dismissed) or by appealing this order, I encourage the defendants to seek recovery of their attorneys' fees and costs. Likewise, if the plaintiff brings similar claims in the future against these or other unions and welfare funds, he should expect that he will be properly called on to show cause under Fed.R.Civ.P. 11, 28 U.S.C. § 1927, and the inherent power to sanction unfounded, vexatious, and harassing litigation to show cause why he should not be sanctioned through imposition of an award of fees and costs.

For the foregoing reasons, it is

ORDERED THAT:

1. Plaintiff's motion to continue the discovery cutoff, etc., be, and the same hereby is denied; and
2. The defendants' motions for summary judgment be, and the same hereby are granted.

So ordered.

Filed NOV 13, 2002

James G. Carr
U.S. District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

Lawrence Moore	)	CASE No 3:01-7556
	)	
Plaintiff,	)	
v.	)	JUDGMENT ENTRY
Int. B'hood of Elect.	)	
Wkrs. Local 8, et al,	)	
	)	
Defendants.	)	

For the reasons stated in the Order filed on November 14, 2002,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that

1. The plaintiff's motion to continue the discovery cutoff, etc., be, and hereby is denied.

2. The defendants' motions for summary judgment be, and the same hereby are granted.

3. Case closed.

Filed: NOV 13, 2002

James G. Carr
U.S. District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

Lawrence Moore	)	CASE No 3:01-7556
	)	
Plaintiff,	)	
v.	)	ORDER
Int. B'hood of Elect.	)	
Wkrs. Local 8, *et al*,	)	
	)	
Defendants.	)	

An order was entered on November 14, 2002, granting the defendants' motions for summary judgment. (Doc. 96). By letter dated November 15, 2002, counsel for some of the defendants has notified the undersigned that portions of that order should be corrected. That suggestion appears well-taken.

1. Re. Section C.

Section C in the November 14, 2002, order shall be deleted, and a new Section C shall be substituted, as provided herein.

The following is hereby deleted from the November 14, 2002 order:

C. Motion of Local 8 Retirement Plan and Trust Toledo Electrical Welfare Fund & Richard Clarson

Plaintiff named other benefit funds and another individual defendant in his complaint. These include the Toledo Electrical Welfare Fund, International Brotherhood of Electrical Workers Local 8 Retirement Plan and Trust, and Richard Clarson. Those defendants have not been served. Their motion for summary judgment shall, accordingly, be granted.

and the following is substituted for the foregoing deleted material:

C. "Supplemental Fringe Benefit Fund" and "Toledo Electrical Benefit Plans board of trustees"

C. "Supplemental Fringe Benefit Fund" and "Toledo Electrical Benefit Plans board of trustees"

Plaintiff has named the "Supplemental Fringe Benefit Fund" and "Toledo Electrical Benefit Plans Board of Trustees" in the caption of his complaint. Those names do not refer to any legal entity With the capacity to sue or be sued. Suit against them cannot, accordingly, be maintained, and to the extent that plaintiff seeks relief from such entities, his complaint shall be dismissed with prejudice.

2. Inclusion of Local 8 Retirement plan and Trust, Toledo Electrical Welfare Fund, and Richard Clarson in Section B. as "Fund Defendants"

Counsel interpret the November 14, 2002, order to include the defendants Local 8 Retirement Plan and Trust, Toledo Electrical Welfare Fund, and Richard Clarson among the "Fund Defendants" whose motions for summary judgment are discussed and granted in Section B. That interpretation is correct, and is hereby confirmed. The order of November 14, 2002, is deemed amended to reflect that interpretation.

Conclusion

It is, accordingly, hereby

ORDERED THAT the order of November 14, 2002 (Doc. 96) be, and the same hereby is amended in accordance with the foregoing.

So ordered.

Filed: NOV 22, 2002

James G. Carr
U.S. District Judge

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Lawrence Moore	) No. 02-16485
Plaintiff/Appellant,	) D.C. No. 01-03733
v.	)
Int. B'hood of Elect. Wkrs. Local 6, et al,	) MEMORANDUM*
Defendants/Appellees	)

Appeal from the United States District Court
for the Northern District of California
Charles R. Breyer, District Judge, Presiding

Submitted May 13, 2003**

Before: CHOY, FARRIS, and LEAVY, Circuit Judges.

Lawrence Moore, proceeding pro se, appeals the judgment of the district court granting summary judgment to defendants. We have jurisdiction pursuant to 28 U.S.C. § 1291, and, upon de novo review, we affirm. Because the parties are familiar with the factual and procedural history of this case, we need not recount it here.

Moore asserts that the district court erred in dismissing his claims that the defendants violated the First and Fifth Amendments to the United States Constitution. The district court did not err in concluding that the defendant union and its individual officials are not state actors. Therefore,

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed.R.App.P. 34(a)(2).

Moore's claims alleging constitutional violations are not actionable. Lugar v. Edmondson Oil Co., 457 U.S. 922, 936-37 (1982).

Moore asserts that the district court erred in dismissing his claims against individual union officers for breach of contract and breach of duty of fair representation pursuant to Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185. The district court did not err in concluding that Section 301 provides the basis for an action for breach of contract or breach of the duty of fair representation only against a union as an entity. See Carter v. Smith Food King, 765 F.2d 916, 920-21 (9th Cir. 1985).

Moore asserts that the district court erred in dismissing his claims for fraud and intentional infliction of emotional distress. The district court did not err in concluding that Moore's claims were state law claims which are preempted by section 310 (sic) of the LMRA. See id. at 921.

Moore asserts that the district court erred in granting summary judgment for Local 6 on Moore's claims for breach of contract and breach of the duty of fair representation. Moore argues that Local 6 breached the IBEW constitution and the collective bargaining agreement by taking dues and pay from Moore, but not giving him a voice or vote on how those funds are spent. The district court did not err in determining that Moore did not state a claim as a union nonmember under Communication Workers of America v. Beck, 487 U.S. 735 (1988). Moore is a voluntary, longtime union member of International Brotherhood of Electrical Workers ("IBEW"). Moore worked for period of time through Local 6 of the IBEW in San Francisco, but did become a member of that local. However, at all times, Moore remained a member of IBEW. As such, he is not a "nonmember" similar to the nonunion employee plaintiffs in Beck.

Moore has also failed to state a claim for violation of the union's constitution under Wooddell v. IBEW, Local 71, 502 U.S. 93 (1991). The IBEW constitution sets forth specific

provisions regarding the rights and duties if a union member working in a different local union. Moore has failed to show that the IBEW constitution was violated regarding his choice to work through Local 6 in 1998 and 2000.

Both the breach of duty of fair representation and breach of contract claims are governed by the six-months statute of limitations period in section 10(b) of the National Labor Relations Act, 29 U.S.C. § 160(b). See Moore v. Local 569 of the IBEW, 989 F.2d 1534, 1542 (9th Cir. 1993). Moore worked through Local 6 in May and June 1998, and in March and April 2000. Moore should have known of any breach of the duty of fair representation or breach of contract when he completed the work through Local 6 ending in April 2000. Moore filed his complaint in October, 2001. Therefore, the claims for breach of contract and breach of duty of fair representation are, in any event, time-barred.

Moore asserts that the district court erred in denying him additional discovery pursuant to Fed.R.Civ.P. 56(f). The district court did not err in concluding that Moore's request for additional discovery would not shed any light on Moore's legal claims or uncover facts precluding summary judgment. United States Cellular Investment Company of Los Angeles, Inc. v. Mobilnet, Inc., 281 F.3d 929, 939 (9th Cir. 2002).

We have considered Moore's remaining arguments and find them to be without merit.

AFFIRMED.

Filed: AUG 07, 2003

Cathy A. Catterson, Clerk
U.S. Court of Appeals

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Lawrence Moore	) No. 02-16485
	)
Plaintiff/Appellant,	) D.C. No. 01-03733
v.	) Northern District
Int. B'hood of Elect.	) of California,
Wkrs. Local 6, *et al*,	) San Francisco
	)
Defendants/Appellees	) ORDER

Before: CHOY, FARRIS. and LEAVY, Circuit Judges.

The memorandum disposition filed on August 7, 2003, is amended as follows: on page 3, paragraph 1, line 10 should read: "...but did not become a member of that local...."

Filed: OCT 07, 2003

Cathy A. Catterson, Clerk
U.S. Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Lawrence Moore	No. 03-3171
Plaintiff/Appellant,	D.C. No. 1:03-7556
v.	
Int. B'hood of Elect. Wkrs. Local 8, et al,	ORDER
Defendants/Appellees	

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

Sixth Circuit Rule 28(g) limits citation to specific situations. Please see Rule 28(g) before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on the other parties and the Court. This notice is to be prominently displayed in this decision if reproduced.

Before: BOGGS, NORRIS, and CLAY, Circuit Judges.

Lawrence Moore appeals a district court grant of summary judgment for defendants in this labor action filed under the Labor-Management Relations Act, 29 U.D.C. § 185, the national Labor Relations Act, 29 U.S.C. § 158, the Employees Retirement Income Security Act, 29 U.S.C. § 1001 et seq., and 42 U.S.C. § 1983. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed.R.App.P. 34(a).

Moore is a member of the International Brotherhood of Electrical Workers and is a traveler, or member "who works on a temporary basis within the geographical jurisdiction of a local union other than his own." *Local Union No. 948, (IBEW), AFL-CIO v. NLRB*, 697 F.2d 113, 114 & n.1 (6th Cir. 1982). Moore has a long history of litigating claims against his union and its locals. Recently, this court affirmed a district court judgment that dismissed a complaint virtually identical to Moore's complaint herein involving another union local. *See Moore v. Int'l Bhd. of Elec. Workers, Local*

58, No. 02-1503, 2002 WL 31056022 (6th Cir. Sept. 13, 2002), *cert. denied*, 123 S.Ct. 1272 (2003).

As in that case, Moore filed the instant complaint in the district court alleging that: (1) defendants violated his rights under the Free Speech Clause and the Takings Clause; (2) defendants committed fraud and deceit; (3) defendants violated the Collective Bargaining Agreement; (4) the union local and representative violated their duty of fair representation; and (5) defendants intentionally inflicted emotional distress. The Judicial Panel on Multidistrict Litigation denied Moore's request to transfer this case and yet another virtually identical action he filed in California. *In re Lawrence Moore/Int'l Bhd. of Elec. Workers Litig.*, 198 F.Supp.2d 1382 (J.P.M.L. 2002). Thereafter, defendants moved for summary judgment, and plaintiff responded in opposition. The district court granted summary judgment for defendants, and Moore filed a timely appeal.

On appeal, Moore contends that: (1) the defendant union and union funds are "state actors" for purposes of § 1983; (2) he has no obligation to pay dues to the defendant local union because he is not a member of the local; (3) the defendant supplemental fringe benefit fund is fraudulent; and (4) his claims otherwise are not preempted, subject to exhaustion of union grievances, or barred under the applicable statute of limitations. Defendants respond that the district court properly dismissed Moore's complaint. In addition, the defendant local union and individual defendant Dennis Duffy have filed a motion for sanctions against Moore pursuant to Fed.R.App.P. 38. Defendants Toledo Electrical Welfare Fund and individual defendant Richard Clarson also move for sanctions and ask that Moore be enjoined from filing further appeals in this court without prior court approval.

Upon de novo review, we affirm the judgment because Moore's claims on appeal lack merit for the reasons stated by the district court in *Moore*, 2002 WL 310566022, at *1-2. First, the district court correctly concluded that none of the

defendants is a "state actor" for purposes of 42 U.S.C. § 1983. *See Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 620 (1991); *Messman v. Helmke*, 133 F.3d 1042, 1044 (7th Cir. 1998). Any claim for breach of the duty of fair representation is barred under the applicable statute of limitations. *See Adkins v. Int'l Union of Elec., Radio & Mach. Workers*, 769 F.2d 330, 335 (6th Cir. 1985). Plaintiff's state law claims are preempted under federal law insofar as they implicate a collective bargaining agreement or employment benefits. *See Cromwell v. Equicor-Equitable HCA Corp.*, 944 F.2d 1272, 1276 (6th Cir. 1991); *Martin v. Associated Truck Lines, Inc.*, 801 F.2d 246, 249 (6th Cir. 1986). Under these circumstances, Moore's claims lack merit.

Finally, defendants' motions for sanctions will be granted because Moore's appeal is frivolous. *See Wilton Corp. v. Ashland Castings Corp.*, 188 F.3d 670, 676-77 (6th Cir. 1999). The defendant local union and individual defendant Duffy seek attorneys fees and costs that relate to the period following a March 25, 2002, letter asking Moore to voluntarily dismiss his claims in the district court. However, only an award of attorneys fees attributable to this appeal and incurred after Moore filed his notice of appeal on December 13, 2002, and of double the moving defendants' other appellate costs is appropriate in this case pursuant to Fed,R. App.P. 38. Accordingly, both motions for sanctions are granted only to this extent. The motion to enjoin Moore from filing further appeals in this court without prior court approval is denied.

For the foregoing reasons, the motions for sanctions are granted, and the district court's judgment is affirmed. *See* Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT.

Filed: SEP 19, 2003 Leonard Green
Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Lawrence Moore	)	No. 03-3171
	)	
Plaintiff/Appellant,	)	D.C. No. 1:03-7556
v.	)	
Int. B'hood of Elect.	)	
Wkrs. Local 6, *et al*,	)	
	)	
Defendants/Appellees	)	ORDER

Before: BOGGS, NORRIS, and CLAY, Circuit Judges.

Lawrence Moore petitions the court to rehear its September 19, 2003 order in which the court affirmed a district court grant of summary judgment for defendants in this labor action. In addition, two additional defendants move the court for sanctions of attorneys fees and double costs against Moore, and the defendants who previously moved for sanctions move for an award of specific amounts.

Upon consideration, the panel concludes that it acted under no misapprehension of law or fact that warrants a rehearing. See Fed.R.App.P. 40(a). Accordingly, the petition for a rehearing is denied. Finally, defendants motions for sanctions will be granted because Moore's appeal is frivolous. *See Wilton Corp. v. Ashland Castings Corp.*, 188 F.3d 670, 676-77 (6th Cir. 1999). An award of attorneys fees and of double the moving defendants' other appellate costs is appropriate in this case pursuant to Fed.R. App.P. 38. Accordingly, the motions for sanctions are granted.

ENTERED BY ORDER OF THE COURT.

Filed: DEC 10, 2003

Leonard Green
Clerk